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One AT&T Way

Bedminster, NJ 07921

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT FABER,
SEAN VAN DER LINDEN,
PATRICK MCKENNA, and
PETER CHEN

Appeal 2009-012956
Application 09/808,475
Technology Center 3600

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision

STATEMENT OF THE CASE

Scott Faber et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-5, 7-12, 14, 16-20, 22-27, 29, and 31-45. We have jurisdiction under 35 U.S.C. § 6(b) (2002). Claims 6, 13, 15, 21, and 30 have been canceled.

SUMMARY OF DECISION

We AFFIRM.²

THE INVENTION

This invention is “a method and apparatus for recruiting, communicating, with and paying participants of interactive advertising.” Specification [0001].

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method comprising:
 providing a list of advertisements to be displayed to a user, wherein one or more of the advertisements comprise a link to be selected by the user to establish a telephonic connection to conduct a real time, person to person, live communication between the user and an advertiser, a rate to compensate the user to conduct the real-time, person to person, live communication with the advertiser, and an indicia of whether the

² Our decision will make reference to the Appellants’ Appeal Brief (“Br.,” filed Nov. 11, 2008) and the Examiner’s Answer (“Answer,” mailed Mar. 31, 2009).

advertiser is currently available for real-time,
person to person, live communication with the
user;

receiving, from the user, a selection of the
link from the list of advertisements;

responsive to the selection of the link,
establishing the telephonic connection for a session
of real time, person to person, live
communications between the user and the
advertiser to advertise one or more items;

compensating the user based on the rate and
a duration of the real time, person to person, live
communications between the user and the
advertiser to generate a balance to be paid to the
user; and

during the session, allowing the user to
purchase the one or more items advertised by the
advertiser in the session of real time, person to
person, live communications by deducting from
the balance to be paid to the user.

THE REJECTIONS

The Examiner relies upon the following as evidence of
unpatentability:

Dedrick	US 5,724,521	Mar. 3, 1998
Katz	US 6,323,894 A1	Nov. 27, 2001
Graham	US 6,732,183 A1	May 4, 2004
Kolls	US 6,807,532 B1	Oct. 19, 2004
Friskel	US 6,839,737 B1	Jan. 4, 2005
do Rosario Botelho	US 2002/0069105 A1	Jun. 6, 2002
De Rafael	US 2002/0116256 A1	Aug. 22, 2002

The Examiner took official notice that “it is old and well known in the advertiser art to let people know when a telemarketer’s seminar is no longer available.” Answer 13. [Hereinafter, Official Notice.]

The following rejections are before us for review:

1. Claims 1-5, 8, 10-12, 16-20, 23, 25-27, 31-36, and 38-44 are rejected under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, and Friskel.
2. Claims 9, 14, 24, 29, and 37 are rejected under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, Graham, and Official Notice.
3. Claim 45 is rejected under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, and Katz.
4. Claims 7 and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, and do Rosario Botelho.

ISSUES

The first issue is whether claims 1-5, 8, 10-12, 16-20, 23, 25-27, 31-36, and 38-44 are unpatentable under 35 U.S.C. §103(a) over De Rafael, Dedrick, Kolls, and Friskel. Specifically, the major issue is whether the combination of the prior art teaches a step of “compensating the user based on the rate and a duration of the real time, person to person, live communications between the user and the advertiser to generate a balance to be paid to the user.”

The second issue is whether claims 9, 14, 24, 29, and 37 are unpatentable under 35 U.S.C. §103(a) over De Rafael, Dedrick, Kolls, Friskel, Graham, and Official Notice.

The third issue is whether claim 45 is unpatentable under 35 U.S.C. §103(a) over De Rafael, Dedrick, Kolls, Friskel, and Katz.

The fourth issue is whether claims 7 and 22 are unpatentable under 35 U.S.C. §103(a) over De Rafael, Dedrick, Kolls, Friskel, and do Rosario Botelho.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. De Rafael's paragraph [0007] teaches that it is desirable for an internet advertisement to attract the attention of a viewer and that advertisers attract their attention by providing visual graphics or credits to the user.

2. Dedrick's column 13, lines 12-63 state:

The software tools include "cost type" and "cost value" fields that accompany each unit of electronic information. The cost type and cost value can be utilized to calculate a price that can be either credited to or debited from the end users. The fields allow the publisher/advertiser 18 to establish the manner in which the information will be charged to the end user's account. One example of a cost type is "pay

per view” payment method, wherein the end user pays an associated cost each time the user consumes a unit of information. This type of payment may be desirable for information viewed by the end user, or payment for the period of time that the user consumes the information. These cost types may be desirable when the end user is accessing a database that contains, for example, corporate or individual credit information, or the drawings and text of a patent database.

The user may also subscribe to units of information, either individually, or through a group such as the employer of the end user. For example, the end user may wish to subscribe to a news database that provides the end user news information upon command for a monthly, yearly, etc. charge. The cost types may also include a one-time charge for a unit of information, wherein the end user is granted access to the unit of information for the life of the unit.

The cost types may be provided as part of a menu that can be selected by the publisher. For example, the menu may appear to the publisher as follows:

“Pay Per View”

“Pay Per Byte”

“Pay Per Time”

...

... In addition to debit models, the software tools may also allow the publisher/advertiser 18 to build a credit model with credits the end user’s account each time the user views a unit of information. This model is particularly useful for advertisers who may want to credit the end user’s account to encourage the user to consume an advertisement. By way of example, the credit model can be used in association with the yellow pages content database. The publisher/advertiser

may also be provided with a field that allows the publisher/advertiser to select between credit and debit.

(Emphasis added).

ANALYSIS

The rejection of claims 1-5, 8, 10-12, 16-20, 23, 25-27, 31-36, and 38-44 under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, and Friskel.

Claims 1-5, 8, 10-12, 16-20, 23, 25-27, 31-36, and 38-42

The Appellants argue claims 1-5, 8, 10-12, 16-20, 23, 25-27, 31-36, and 38-42 as a group. Br. 5-10. We select claim 1 as the representative claim for this group, and the remaining claims 2-5, 8, 10-12, 16-20, 23, 25-27, 31-36, and 38-42 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

The Appellants argue that 1) the prior art does not teach the step of “compensating the user based on the rate and a duration of the real time, person to person, live communications between the user and the advertiser to generate a balance to be paid to the user” recited in claim 1 (Br. 6-10) and 2) that De Rafael teaches away from the combination with Dedrick.

Turning to the Appellants’ first argument, the Appellants argue that the Examiner’s combination De Rafael, Knoll, Friskel and Dedrick does not teach a step of compensating the user based on the rate and duration of the communication between the user and the advertiser. Br. 7-8. Specifically, the Appellants disagree with the Examiner that Dedrick’s column 13, lines 12-63 teach that a pay per time credit model can be used to credit *the user*. *Id.* The Appellants argue that Dedrick’s reference to a pay per time credit

model only applies to the user paying for use content and does not apply to the advertiser paying the user to view content. *Id.*

We disagree with the Appellants regarding the scope of Dedrick's teachings related to the pay per time cost model. We find the Dedrick's teachings does not limit Dedrick's pay per time cost model to only being used to paying for the user's use of the content. Prior to discussing the different types of credit models, including the pay per time credit model, Dedrick states: "The cost type and cost value can be utilized to calculate a price that can be either credited to or debited from the end users." FF 2. Dedrick then describes that pay per time is a cost type. *Id.* Reading column 13, lines 12-63 of Dedrick as a whole, we agree with the Examiner (Answer 16) that Dedrick teaches using a pay per time model to credit a user for viewing an advertisement.

As to the Appellants' argument that there is a wide gap between Dedrick, De Rafael and Kolls and the claimed invention, this argument is based on the Appellants' argument that Dedrick only teaches using a pay per view credit type to credit the user. Br. 9-10. As discussed above, we found that argument unpersuasive and find this argument unpersuasive as well.

Turning to the Appellants' second argument, the Appellants argue that De Rafael teaches away from compensating the user based on a time period, by stating that the end user could easily "ignore the substance of the advertisement" and merely accumulate the amount of time to receive credit ([0007], De Rafael).' Br. 8.

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that

was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.

In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994).

De Rafael's paragraph [0007] teaches that it is desirable for an internet advertisement to attract the attention of a viewer and that advertisers attract their attention by providing visual graphics or credits to the user.

FF 1. We find that this paragraph does not discourage a person of ordinary skill in the art from crediting a user based on a time period that a user has viewed an advertisement. Contrary to the Appellants' argument it generally teaches that providing credit for viewing advertisements is desirable. FF 1.

Accordingly, we find that the Appellants have not overcome the rejection of claims 1-5, 8, 10-12, 16-20, 23, 25-27, 31-36, and 38-42 under 35 U.S.C. § 103(a) as being unpatentable over De Rafael, Dedrick, Kolls, and Friskel.

Claim 43

The Appellants state that claim 43 requires that the advertisement is provided over one connection that provides the web page; and the user is compensated for live conversation with the advertiser over a separate connection. Br. 10-11. The Appellants argue: "However, in the cited references particularly in De Rafael and Dedrick, the rewards are based on the interaction over the connection between the user and the server, processor or computer that presents information." Br. 11.

The Appellants' argument does not address the rejection made by the Examiner. The Examiner cited Kolls to teach "that it is old and well known in the communication art to have real time communications between users and advertisers that is separate from a communication link used to provide a webpage" and reasoned that the limitation of claim 43 would be obvious based on a combination. Answer 11. The Appellants' argument fails to challenge the Examiner's finding with regard to Kolls or the Examiner's reasoning in finding that a combination of the prior art and Kolls teaches the claimed limitation. *See* Br. 10-11.

Filing a Board appeal does not, unto itself, entitle an appellant to *de novo* review of all aspects of a rejection. If an appellant fails to present arguments on a particular issue – or, more broadly, on a particular rejection – the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection. . . Thus, the Board will generally not reach the merits of any issues not contested by an appellant.

In re Frye, 94 USPQ2d 1072, 1075 2009-006013 (BPAI 2010)(precedential).

Accordingly, we find that the Appellants have not overcome the rejection of claim 43 under 35 U.S.C. § 103(a) as being unpatentable over De Rafael, Dedrick, Kolls, and Friskel.

Claim 44

The Appellants state that claim 44 requires that the user is compensated for the live conversation with the advertiser over a connection established via conferencing together a first telephone call to the user and a second telephone call to the advertiser, in response to the user selecting a

link provided in the advertisement. Br. 11-12. The Appellants again argue: “However, in the cited references particularly in De Rafael and Dedrick, the rewards are based on the interaction over the connection between the user and the server, processor or computer that presents information.” Br. 12.

The Appellants’ argument does not address the rejection made by the Examiner. The Examiner cited Kolls to teach “that it is old and well known in the communication art to connect[s] a user and advertiser by clicking an advertiser’s ad” and reasoned that the limitation of claim 44 would be obvious based on a combination. Answer 11. The Appellants’ argument fails to challenge the Examiner’s finding with regard to Kolls or the Examiner’s reasoning in finding that a combination of the prior art and Kolls teaches the claimed limitation. *See* Br. 10-11.

Accordingly, we find that the Appellants have not overcome the rejection of claim 44 under 35 U.S.C. § 103(a) as being unpatentable over De Rafael, Dedrick, Kolls, and Friskel.

The rejection of claims 9, 14, 24, 29, and 37 under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, Graham, and Official Notice.

Claims 9, 24, and 37

The Appellants argue claims 9, 24, and 37 as a group. Br. 14-15. We select claim 9 as the representative claim for this group, and the remaining claims 24 and 37 stand or fall with claim 9. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

The Appellants state that claim 9 requires that the user is compensated for the live conversation with the advertiser over a video link established in

response to the user selecting the link in the advertisement. Br. 13-14. The Appellants argue: “However, in the cited references, the rewards are based on the user answering all the questions from the processor or computer of De Rafael or based on consuming information from the server apparatus of Dedrick.” Br. 14.

The Appellants’ argument does not address the rejection made by the Examiner. The Examiner cited Graham to teach “that it is old and well known in the computer art to connect multiple users to online seminars via the Internet” and reasoned that the limitation of claim 9 would be obvious based on a combination. Answer 12. The Appellants’ argument fails to challenge the Examiner’s finding with regard to Graham or the Examiner’s reasoning in finding that a combination of the prior art and Graham teaches the claimed limitation. *See* Br. 13-14.

Accordingly, we find that the Appellants have not overcome the rejection of claims 9, 24, and 37 under 35 U.S.C. § 103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, Graham, and Official Notice.

Claims 14 and 29

The Appellants argue claims 14 and 29 as a group. Br. 14-15. We select claim 9 as the representative claim for this group, and the remaining claims 24 and 37 stand or fall with claim 9. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

The Appellants state that claim 14 requires that the user is compensated for the live conversation with the advertiser in an interactive seminar which can be selectively activated or deactivated by the advertiser.

Br. 14-15. The Appellants argue: “However, in the cited references, the rewards are based on the user answering all the questions from the processor or computer of De Rafael or based on consuming information from the server apparatus of Dedrick.” Br. 15.

The Appellants’ argument does not address the rejection made by the Examiner. The Examiner cited Graham to teach “that it is old and well known in the computer art to connect multiple users to online seminars via the Internet” and took Official Notice that “it is old and well known in the advertiser art to let people know when a telemarketer’s seminar is no longer available.” Answer 12-13. The Examiner reasoned that the limitations of claim 14 would be obvious based on a combination of the cited prior art. Answer 12-13. The Appellants’ argument fails to challenge the Examiner’s findings with regard to Graham and Official Notice or the Examiner’s reasoning in finding that a combination of the prior art, Graham, and Official Notice teaches the claimed limitation. *See* Br. 14-15.

Accordingly, we find that the Appellants have not overcome the rejection of claims 14 and 29 under 35 U.S.C. § 103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, Graham, and Official Notice.

The rejection of claim 45 under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, and Katz.

The Appellants state that claim 45 requires that the user is compensated for his or her participating in live conversation with the advertiser, after the user joins a current, pre-existing session, in which more than one user is communicating with the advertiser. Br. 12-13. The

Appellants again argue: “However, in the cited references particularly in De Rafael and Dedrick, the rewards are based on the interaction over the connection between the user and the server, processor or computer that presents information.” Br. 13.

The Appellants’ argument does not address the rejection made by the Examiner. The Examiner cited Katz to teach “that the advent of video phones has enable[d] users to visually communicate from remote locations where employees or customers in different places can take part in interactive training sessions or seminars with no loss of time for travel” and reasoned that the limitation of claim 45 would be obvious based on a combination. Answer 13-14. The Appellants’ argument fails to challenge the Examiner’s finding with regard to Katz or the Examiner’s reasoning in finding that a combination of the prior art and Katz teaches the claimed limitation. *See* Br. 12-13.

Accordingly, we find that the Appellants have not overcome the rejection of claim 45 under 35 U.S.C. § 103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, and Katz.

The rejection of claims 7 and 22 under 35 U.S.C. §103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, and do Rosario Botelho.

The Appellants argue claims 7 and 22 as a group. Br. 15-16. We select claim 7 as the representative claim for this group, and the remaining claim 22 stands or falls with claim 7. 37 C.F.R. § 41.37(c)(1)(vii) (2009).

The Appellants state that claim 7 requires that the user may selectively request advertisements; and the user is compensated for his or her

time in subsequent live conversation with the advertiser after the user selects the link provided in an advertisement. Br. 15-16. The Appellants argue: “However, in the cited references, the rewards are based on the user answering all the questions from the processor or computer of De Rafael or based on consuming information from the server apparatus of Dedrick.” Br. 16.

The Appellants’ argument does not address the rejection made by the Examiner. The Examiner cited, do Rosario Botelho to teach “that it is old and well known to display a list of advertisements in response to a selection of one or more category or type of advertisers” and reasoned that the limitations of claim 7 would be obvious based on a combination of the prior art. Answer 14. The Appellants’ argument fails to challenge the Examiner’s finding with regard to do Rosario Botelho or the Examiner’s reasoning in finding that a combination of the prior art and do Rosario Botelho teaches the claimed limitation. *See* Br. 15-16.

Accordingly, we find that the Appellants have not overcome the rejection of claims 7 and 22 under 35 U.S.C. § 103(a) as being unpatentable over De Rafael, Dedrick, Kolls, Friskel, and do Rosario Botelho.

DECISION

The decision of the Examiner to reject claims 1-5, 7-12, 14, 16-20, 22-27, 29, and 31-45 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

Appeal 2009-012956
Application 09/808,475

AFFIRMED

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AT&T LEGAL DEPARTMENT - GT
ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT&T WAY
BEDMINSTER NJ 07921